

Abortion, Sex, and the Limits of Morality

[This “lecture” was completed and abandoned by Bianco Luno. Luno could never imagine himself delivering a lecture, even essay writing comes hard to him. His native fragmentary style is anathema to the structure one expects of those forms. Nevertheless, this is one of his more remarkable attempts at being expository and reasonably accessible. He offers an interpretation of the major philosophical literature on abortion and then uses that as a springboard to approach his radical view of the nature of morality.

—Victor Muñoz, editor]

Introduction

The topic

I want to talk about a topic in ethics. Ethics is the branch of philosophy that tries to understand why we ought to interact in a particular way with each other. The “why” part is crucially important to philosophers because if all we care to know is how we come to interact in the way we do, that can and is explored by disciplines such as psychology, sociology, anthropology, evolutionary biology or even history. The story philosophers of morality are looking for is the *why* behind the “ought.” Science investigates (when it doesn't get distracted) what *is*, not what *ought* to be. It may operate under a system of rules or “oughts” but, whatever those may be, they are not discovered through scientific investigation. At some point scientists, must have “philosophized” to arrive at the “oughts” that govern its method.

The “wherefore” in ethics may not be mysterious to the religious among us. If pressed on why we should do things, they may say because God or scripture says so. For the rest of us, whose worries are not mollified by this answer, the existence of morality is a challenge to explain.

Some people, including some philosophers, think there is no such thing as an “ought” that isn't captured by an “is.” We merely behave like the evolutionarily and environmentally conditioned animals we are. Between the forces of physiology and environment and their development over time, there is no room for talk that things that “should be” any other way than they are. We are invited to believe that is the long and the short of it.

The claim that there is no “ought” beyond what “is” raises interesting questions which I won't discuss here. But, wrong or right, most of us still operate *as though* there is sometimes a wrong or a right. I will assume there is for this occasion.

So, assuming there are such things, I will jump to a problem in practical ethics that for a long time has not failed to get press.¹ Abortion as a topic gets the attention it does, I think, because it rouses passions behind religion, politics, and sex like perhaps no other. It condenses into one question *life*—the bare

¹ “The abortion debate rages on,” wrote Jane English nearly four decades ago in “Abortion and the Concept of a Person,” *Canadian Journal of Philosophy*, vol. 5, no. 2, October 1975.

fact of it: its beginning, filling and end. At bottom, it is comparable in weight to that other consummately philosophical question noted by Albert Camus—suicide—because it calls into question as much.

This will be a discussion of the moral considerations surrounding abortion. It is not about whether a woman has a right to choose an abortion in some legal or political sense. How one feels about the moral question probably does affect on how one feels about legal and political aspects of the matter, but there is no *necessary* connection. It is a perfectly consistent position to insist that, though a woman, and *only* a woman, has a moral voice in the matter of her abortion, society may have authority to prevent her from making a choice to have it for reasons that have nothing to do with her moral right.²

But I also have a much bigger agenda. I choose abortion as the point of departure for making a claim about *the nature of morality*.³ The issues surrounding abortion set off in stark relief something about this wider subject. The same ultimate conclusion I draw might be made starting from other central problems in practical ethics, but abortion, I think, does it most efficiently.⁴

The larger point has to do with sex differences and how these frame the range of appropriate responses to a moral problem. Insights from women on the subject of abortion have special authority. They don't solve the moral problem, necessarily. But they enrich it by giving it authenticity. *An enriched problem is, I think, progress*. I don't pretend to solutions to a woman's concrete dilemma. But I do point out non-solutions when I see them.

Sex blindness

I think every topic in philosophy benefits from a perspective that is not the masculine one. For the most part and almost needless to say, the male view of the matter has been identical with the traditional one. In recent times, as more women have entered the ranks of philosophy, I think many philosophers have thought the discipline can now proceed affecting an attitude of sex-blindness. Many seemed to have thought that, especially when the subject was ostensibly “sexless” (as with capital punishment), why not accept that what men have thought and written about the matter is sufficient to speak for all, women and men, alike? If women in great numbers have not seen fit to immerse themselves in the moral issues attending the subject, isn't that because women would think and write about it in a way not substantially different from men? When the topic is capital punishment or the penal system, generally, which doesn't, on the surface, seem to have a sexual angle to it, does the sex of the voice matter? Why, we might think, do we need women to repeat what men have said about it? The traditional male voice

2 Collective interests, for example, which may be viewed as amoral, may trump those of individual morality. (They *may* because they *can*, not because they *ought* without individuals having already forfeited that authority.) Who says anybody has any legally enforceable rights if the community in which the individual is ensconced has decided they don't? People sometimes make the claim. But whether it is moral for society to trump the individual is a distinct question in political philosophy and a whole other discussion. The moral and political I keep separate because the political entails a veneer of power that the moral does not. Here we are just concerned with hapless morality.

3 Morality is about the rules or practices that should govern relations between people. The *very first* relationship with another human being any of us has is with our mother. That relationship literally sets the tone for any relationship we will ever have. So there is a sense in which morality *begins* there and it should not surprise us that abortion should loom so large as a moral problem. *Not* to abort is a moral problem, too, I hope to show.

4 Bianco Luno approaches the same view ultimately presented here from the less auspicious starting point of capital punishment. See “On being blotted out,” <http://phlogma.com/weininger/on-being-blotted-out-168>

on such topics in effect doubles as the genderless, sex-blind, generically “human” voice on the matter. That voice seems to be an unquestioned Holy Grail. Or worse: too often that sexless voice is not even thought grail but rather a simple matter of affectation.

Through this “doubling effect,” men have spoken, and continue to speak, both for themselves (naturally) and pretend to speak for the species (sometimes by default). This is acceptable if we assume it does not matter that women's voices are not represented in areas where there is no *specifically* feminine interest in the matter. Women themselves, I fear, almost as easily buy into this assumption.

But it is a mistake.

I argue there is no topic in philosophy, no matter how “sexless” or sex neutral it may seem (right down to logic or the philosophy of mathematics), that will not benefit by having specific (not incidental) feminine input. This is true because of *significant* sex difference. Men and women are not interchangeable, nor are their standpoints, nor what may be seen from those standpoints. *And everything that gets seen or considered is seen or considered from one or the other of those two standpoints.* Sometimes assertions of sexual “equality” of one sort or another mask this fact. That's my quarrel with the uncritical use of the idea of “equality” and, relatedly, with the overly exerted use of “social construction” to characterize genuine sex difference. Gender is real. Sex is, too. The second came first and didn't go away once the first came on the scene. Gender doesn't replace sex; it adds yet another layer of complication. Both sex and gender are proper objects of science, but mine is a claim about the concepts we use to talk and think about things; it is not a scientific one.⁵ Science is actually part of the problem, not the solution, since it too often operates uncritically with concepts it borrows from the wider culture—all the while thinking otherwise.

The point about the need for the female voice in philosophy is not vaguely chivalrous. That attitude runs deep in men—even the most well-meaning and considerate. Perhaps, these especially. The sententious point is nothing less than that important progress in philosophy will not be made any other way. I do not mean progress for women in philosophy but progress pure and simple. It is not just that women can contribute insights that men cannot. Though that is true enough, as we should see. It is that the insights that men contribute are not fully understood except against a certain light that may *only* come from the perspective of women. And vice versa. The ultimate motivation here is not fairness to women but fairness to the lie of things. But, we are, I contend, very far from any such kind of fairness. We flatter ourselves to think we can be impartial as things are.

So, although ultimately I see myself as making a point about moral philosophy—if not philosophy in general, I will approach it here from a subject about which only a die-hard moral egalitarian would think a man's view of the matter on a par with a woman's.

Obviously, a man (barring as yet science fiction surgery) is never going to be in a position to consider having an abortion. So men, when they have opinions about this situation, opine with a handicap. It is difficult to think of a single type of action that men engage in that at least some women, sometimes, however rarely, may not also.⁶ But the option to give birth—or not—is not open to men. Unless we ram

5 There may be the appearance of a kind of naturalism in the final structure of moral theories that I will sketch. But, if I am understood correctly, this naturalism does not obviate the force of traditional moral theories. I do not see advantage in the term “naturalism” to describe my position.

6 Rape maybe. A woman may sexually abuse but I will argue that it has a strikingly different moral character than when a

through a set of “sex-blind” moral principles, purporting abstraction from any sexual condition whatever, onto the subject, a man's understanding of what abortion entails must come from the voiced experience of women.

Abstracting from our sexed state is a great deal harder than it is currently fashionable to believe. The supposed abstraction easily offers cover for prejudice. It may be logically possible to abstract from sex altogether, but it is so fraught with opportunity for sex-serving distortion that the burden of proving successful abstraction from a concretely sex-conditioned view to true generically human principles should be on the one who claims the ability. I am not aware of any one who is convincing. The ability should not be taken for granted.

I say this to explain why I trot out from the start the sex of the person along with her or his opinion in the survey below. I start by calling attention to it. Not because that is supposed to qualify or disqualify anyone from having an opinion but so that our consciousness is raised about it. This invites everyone to compensate—and *know* they are compensating—for this critical piece of information in making their assessments.

So, I contend that a man may only be an authority on the morality of abortion *as it affects him*. He has no legitimate voice in the matter as it affects a pregnant woman. And only a contributory, but not necessarily comparable voice, as it affects the species. This is because giving birth is not within the purview of his essential biological functions.⁷

This is my reason for insisting that a say on abortion is no man's business before being asked by a woman. And my argument extends with less—but still noticeable—effect to infanticide as well. And (at least with regard to abortion) a woman is never under an obligation to ask his opinion. If he is the father, whatever convictions he has on the matter of at least one abortion—the one of the fetus he helped to conceive, he forfeited all right to their expression after impregnation. Other men, or society at large, have no *moral* say whatever in the matter of a particular woman's choice to abort or not.

Certainly, there is a point at which moral infanticide becomes moral homicide, hence irremediably implicates others, but that requires the effort of drawing a line and not likely a very sharp one. While an umbilical connection exists between a mother and child, the burden of giving or not giving life remains solely with the mother. It is a *burden*, a fateful and momentous one, no matter what she chooses to do. We could talk about why even when she chooses to *have* the child *that* choice, too, is or *ought* to be no less grave than the choice to abort. *Giving birth may be as wrong as abortion*.

Again, what understanding we are ever going to have about the morality of abortion is going to have to come from women. A man might serve as midwife to the understanding but the principle labor in coming to it is hers. What I will offer in Part II below is an argument that excuses men from having an equal voice in the matter. They seem to need the excuse.

The above claims are mine and though they may at points coincide with views of some feminist

man does. There are also certain *mental actions* that are characteristically inconceivable to a woman but not to a man: such as principled abstraction from human relationship. But I leave these points for another discussion.

⁷ Putting fully realized people to death—or not—as in punishment, war, suicide, or other, what I call “moral” emergencies, in contrast, may well be within his purview in a special way in which it may be less so for a woman. I address that contrast elsewhere.

thinkers, they come from a radically different place. I will offer my argument after I first survey and consider those of several influential thinkers on the subject, mostly (and rightfully) women. But I will also discuss a revealing take on the question by a man because it will serve as an exception that proves an interesting rule. The problem of abortion is not made simple by leaving men out of it, rather it changes, significantly.

Most importantly, the problem goes right to the heart of ethics—not a generic, but a radically *sexed* ethics and, I think, the *only* one we can adequately conceive. It goes to the heart of ethics because it will help point up the structure of any kind of moral theorizing we may do.

Part I: A survey of opinions

The classic case against abortion

The traditional view goes roughly like this:

1. It is wrong to destroy a person.
2. A fetus is a person.
3. Therefore, it is wrong to destroy a fetus.⁸

John Noonan⁹ offers a well-known defense of the second premise, arguing that a fetus is a person or a morally significant being whose destruction is wrong. He goes through a list of items sometimes latched onto as markers of fetal entry into the moral realm: viability, physical appearance, feelings of attachment toward the fetus by others, etc. He rejects them all as either too arbitrary or too elastic to serve such an important function.

Viability outside the mother's uterus as a marker of independent moral status is a potential moving target in light of the technology to save premature infants in the last trimester, at one end, and of *in vitro* fertilization and developing early gestation techniques in the early first trimester, at the other end.

Physical appearance and the presence or absence of feelings of identification with the fetus are

8 I won't rehearse this argument in detail here except to say that the first premise is one that could only have occurred to someone who requires such injunctions. And the second premise was invented to make the first one easier. At the end of this discussion it should be clearer why I say this. I mention the argument here because it is background to what follows and because in its legalistic simplicity it bares all the marks of having settled for a long time the issue for those whose interest in the matter is constitutionally and fatefully removed.

9 John T. Noonan, *The Morality of Abortion: Legal and Historical Perspectives*, (Cambridge, MA: Harvard University Press), c. 1970. Noonan presents a proper defense of the humanity of a fetus. I do not disagree in principle with the premise that the fetus is human in virtue of being born of humans. Like Judith Thompson, in my own argument, I think I can reach my conclusion, though it is different from hers, in the face of that concession. For more on the classic argument, see also Michael Tooley, "Abortion and Infanticide." *Philosophy & Public Affairs* 2:1 (Autumn 1972): 37–65, and my notes: <http://phlogma.com/index.php?p=122>.

manifestly arbitrary and invitations to partiality that worry moral philosophers.¹⁰

The heart of Noonan's argument rests on identifying the *singular* event that signals our entry into the realm of moral significance. Only the moment of conception fits the bill as a relatively clear marker of the beginning of the path to personhood. The probability, Noonan writes, that we shall end up fully human, in the most loaded sense of that term, is about 80%¹¹ once we have been conceived. (Any given spermatozoon or ovum prior to conception has a probability of being in the history of an adult human thousands or millions of times less.) For Noonan, conception is as clear a marker as we can ask for.

If we grant this, a mother does not have a right to abort unless her life is in danger. She too is a person with a right to life, after all. She has a right to self-defense, even at the expense of an innocent. But injury, pain, suffering, indignity, inconvenience, or trespass on her body do not rise to the occasion as excuses for ending the life of a highly probable person. She has a right to defend her life but not a right to untrammelled control of her body—or dignity, for that matter. Rape does not change the case.

Noonan's conception of a person amounts to *that which is conceived of human parents*. This is a *genetic* definition, as Mary Ann Warren calls it. Is it adequate for drawing *moral* conclusions? How do we get from a genetic person to a person who has moral status? Moral status is not an observation in the way a stage in fetal development is. Moral status is *conferred* upon some entities and not others. Certain diseases may be “conceived” after a fashion in sexual intercourse. We do not confer the cells attending those conceptions moral status. What is it about the cells that will likely become a person that triggers having moral status conferred upon them? If it is because they *will* become a person, then we are admitting they are not so *yet*. So what has to happen to those cells, or what must they be capable of, before they accrete moral status. Whatever that is would help us understand what a person is in a way that explains the *normativity* implied if we think it is not ok to kill one. Normativity is an expression of value. Our next philosopher addresses this.

Mommie has a license to kill

Mary Anne Warren offers a response to the classic argument against abortion based on the relative rights of mother and fetus which in turn stem from their relative personhood. She argues for a position we can call, for short, “abortion on demand.” She denies the second premise above. A fetus, she claims, is not a person—that is, not a fully invested member of the moral community in which the injunction not to kill ordinarily has effect. Therefore, whatever else it might be to destroy a fetus, it is not wrong in the way it is wrong to destroy a person.

For Warren, a being, to be a person, must have at least some of these capabilities (among possibly others):

1. Consciousness (of objects and events external and/or internal to the being), and in

10 But Jane English writes, “Our psychological constitution makes it the case that for our ethical theory to work, it must prohibit certain treatment of non-persons which are significantly person-like.” See note 1.

11 More recent estimates suggest that the percentage of embryos that survive to birth is only 20-30% due to fetal pathology. Enid Gilbert-Barness, Diane Debich-Spicer, et al. *Embryo and Fetal Pathology*, Cambridge University Press, 2004, p.

14. Still Noonan's point stands. There is a vast change in probabilities at conception that is not matched at any other point of development.

particular the capacity to feel pain;

2. Reasoning (the *developed* capacity to solve new and relatively complex problems);

3. Self-motivated activity (activity which is relatively independent of either genetic or direct external control);

4. The capacity to communicate, by whatever means, messages of an indefinite variety of types, that is, not just with an indefinite number of possible contents, but on indefinitely many possible topics;

5. The presence of self-concepts, and self-awareness, either individual or racial, or both.¹²

Clearly, a fetus has none of these things and so is not a person with a right to life.

One way to refuse to accept Warren's conclusion appeals to the fact that a fetus *does* have these traits *potentially* and, as such, is a *potential* person and in virtue of that has a right to life.

Warren responds that a *potential* person does not have the same rights that an *actual* person does.¹³ If we address the rights of a potential person in isolation, perhaps, a case could be made for the fetus's right to something. But the problem is that there is a contest. The mother, as an actual person, has an actual right to life and an actual right to autonomy (in this context, control over her body). The fetus, as a-not-yet-actual person, has neither. No actual right the fetus has is violated if the mother chooses to abort it. The most you can say for the fetus is that it has *potential* rights. A *potential* right, however, can never trump an *actual* right. Only beings with at least some of those abilities listed can have actual rights. The mother has them, the fetus does not.

Consequently, a mother only has to consider her own rights when making a decision to carry a pregnancy to term. She may at any time terminate the process without violating anyone's *actual* rights.

To have a right, Warren suggests in essence, one must have adequate mental development to articulate or indicate a claim to it. A normal adult has it, not a fetus. Other philosophers have made analogous arguments for why animals cannot have rights, in their case, not even potential ones.¹⁴

But what of a neonate or even a small child? Warren admits infants and small children cannot make such claims. Does that mean they might be killed? In Warren's view, they might.

12 Mary Anne Warren, "On the Moral and Legal Status of Abortion," *The Monist*, 1973, paragraph 30. A selection is accessible online (2/14/2012): http://instruct.westvalley.edu/lafave/warren_article.html. See also Bianco Luno, "Sacred purview and insistence," <http://phlogma.com/moral-theory/when-it-ok-to-put-your-foot-down-and-murder-someone-101>.

13 This raises, of course, questions about our tendency to be partial to those closer to us in space and time, which also arise in many other contexts like famine relief, group affiliation, and obligations to future generations, the latter especially comes up in recent concerns over climate change and its impact. If there are reasons to think partiality objectionable, they apply here as elsewhere.

14 Tibor R. Machan, for instance, in "Do Animals Have Rights?" *Public Affairs Quarterly*, Vol. 5, No. 2 (Apr., 1991), 163-173.

A "no man's land" of rights

Warren is comfortable with accepting the existence of this gray area: that period after birth but before the child can begin to articulate a sense of its own right to exist. During this period, in fact, there has always been widespread cultural reluctance to hold a mother who kills her infant *as* responsible for the death of her child as, say, we might the father who kills his infant offspring. It is a reluctance no one nowadays has an interest in trumpeting and it is not always explicitly recognized as such but this ancient idea still reveals itself, sometimes in unlikely places.¹⁵ A mother has, at least implicitly, *extraordinary* privileges over her child. Not unlimited privileges, not without some restriction, but always more privileges than any other human being, including the father.¹⁶

The idea we may have that the father should have an equal role in the disposition of a child is a recent, and largely Western, legalistic development. Yet even major thinkers in that tradition, such as Hobbes and Kant,¹⁷ went out of their way to excuse maternal infanticide within certain admittedly vague limits. They recognized that a mother has special privileges over the life of her child—certainly *before* but also for some time *after* birth. Writing centuries ago, Hobbes and Kant were scarcely feminists by any stretch of interpretation yet both hinted that abortion may well be within a woman's moral purview due to ancient law that predates modern civil institutions. More remarkably, to some degree infanticide, also, was taken to follow from the special relationship of being mother to the infant. (Regarding abortion, Hobbes put it colorfully, "The birth followes the belly." No one else has "belly" in the game. The idea of "mother-right" is ancient. Its roots are sunk deep in primordial culture. Neither Kant nor Hobbes saw himself saying anything controversial in acknowledging this even if there is no formal place for it within their mature political and moral orders. I will return later to this theme.)

Needless to say, their motives were different from those of modern feminists. It was not that a woman has a "right to choose," as Hobbes and Kant saw it, but that *nobody else has a right nearly so natural and intimate* as hers to determine the fate of her child. Certainly, not society at large—except by legal fiat, but it is the morality of that fiat that concerns us here.

15 From the article on Infanticide at <http://en.wikipedia.org/wiki/Infanticide>: "In 2009, Texas state representative Jessica Farrar proposed legislation that would define infanticide as a distinct and lesser crime than homicide. Under the terms of the proposed legislation, if jurors concluded that a mother's 'judgment was impaired as a result of the effects of giving birth or the effects of lactation following the birth,' they would be allowed to convict her of the crime of infanticide, rather than murder. The maximum penalty for infanticide would be two years in prison. Farrar's introduction of this bill prompted liberal bioethics scholar Jacob M. Appel to call her 'the bravest politician in America.'" Appel's comment appears at http://www.huffingtonpost.com/jacob-m-appel/when-infanticide-isnt-mur_b_279703.html.

16 There is, of course, a rich history of the practice and distinctions to be made, such as that between neonaticide (killing very shortly after birth) and infanticide (the killing of older children). Women have usually done more of the former and men of the latter. Stressful conditions, needless to say, are the occasion. But whatever the conditions that effect the actual practice, our concern is with *the relative moral leniency* with which the practice is commonly viewed. It might show up in our culture in the different lengths of sentences given to convicted mothers and fathers, in closely similar situations. The fact that religions and belief systems have been compelled to enjoin against it is, even in pre-statistical times, evidence for its prevalence in the face of certain obvious counter expectations we have of parents, mothers, especially. <http://en.wikipedia.org/wiki/Infanticide>

17 See Bianco Luno's notes on Kant and Hobbes: "An affair of honor and the darkness of hell" <http://phlogma.com/kant/honor-his-and-hers-129> and "Mommy has a license to kill, Kant said so" <http://phlogma.com/weininger/mommy-has-a-license-to-kill-70>. On Hobbes and his view of paternal rights, see Carole Pateman, "'God Hath Ordained to Man a Helper': Hobbes, Patriarchy and Conjugal Right" *British Journal of Political Science* Vol. 19, No. 4 (Oct., 1989), pp. 445-463.

On a Kantian account, the young child—and, perforce, the fetus—is as yet far from qualified as full participant in the rational kingdom of ends that constitutes the moral community. (Warren and Kant are in agreement that far.) This though Kant had doubts about whether the mother was, *as a woman*, herself qualified either. But, consistently, he viewed the mother/child relationship as somewhat outside the moral law, or at least the moral law as it applied to men, i.e., the only *full* participants in the world where the morality he articulated purported to reign. He does speak of a certain honor peculiar to women, in this context, suggesting that she operates under a different moral aegis.¹⁸

What should be remarked is that some modern feminists—those who argue by invoking rights as Warren does—have essentially adopted the dominant Western liberal tradition in which the notion of rights plays a crucial part. Curiously, though, this liberal tradition, which concocted the notion of “rights” (initially having much more to do with the distribution of property and power than with specifically human entitlement), is strikingly patriarchal in origin. This is evident in its pedestalization of individual liberty at the expense of every other human value—as has been noticed by other women thinkers. There are other philosophical traditions that are more native or at least friendlier to fundamentally feminist values than this one. As we shall see later, assuming that women have different values or at least place a different spin¹⁹ on *ostensibly* the same “values” they supposedly share with men, there are other ways to conceptualize the problem of abortion that do not involve talk of rights.

I have been stressing the connection between abortion of a fetus and the killing of an infant or “pre-person” child. But the situation is different, one could argue, as Warren does, when the child is no longer physically connected to the mother's body because her physical autonomy is no longer at stake, leaving open other possible dispositions of the child. The newborn or small child may not yet have rights on its own but at least one of its mother's rights over it—this formerly-but-no-longer-part-of-her-body that may subsist on its own and which may or may not yet have rights conferred upon it by others (such as other family, society, etc.) who may have an interest—is not in play. The child is no longer part of her body—even if, in every other sense of possible connection between two beings, she may well claim the child as hers. And hers to do with as she wishes even though it is no longer strictly a part of her physical body.

But Warren leaves open the possibility that infanticide is still a moral option in adverse circumstances: extreme poverty, abuse, hopeless congenital illness, even limitations of her own ability to love, all that flesh may be heir to—in short, when, in the best judgment of the mother, the choice to let the child live may set the stage for its one day ruining the day it was born and condemning the one who let it happen. The weight of consequence involved here is monumental. And if her judgment is not to be respected with regard to the future prospects of this child, whose can we substitute for it? We are assuming society has largely already abandoned her—otherwise, she would not likely be in some of these straits in the first place. If the larger community has an interest apart from hers, it behooves it to show this by supporting her materially in every way conducive to the best outcome for the child. *In so far as it has not done this, society has disqualified itself from having a moral opinion (whatever legal power it may have).* If it still exercises an opinion, it does so on extra-moral grounds—i.e., because it *can*, not because it has moral right.

18 "An affair of honor and the darkness of hell" <http://phlogma.com/kant/honor-his-and-hers-129>. More about Kant on this below.

19 We address elsewhere, for example, how the notion of freedom or liberty means something significantly different for women from what it does for men.

And we are inclined to think, again, that Hobbes and Kant—long dead men though they are—agreed.

The *legality* of infanticide, of course, is relatively clear in a given society. It's *moral* status at an early stage of child development is muddier, and this is what creates a moral space in which Warren may articulate with a certain amount of plausibility a personhood standard that leaves young children vulnerable.

Warren does not think that a fetus is valueless, of course. But it can still be asked of its value: *compared to what?* The value of a fetus clearly does not outshine the fully invested right of its still physically connected mother to make choices regarding her own life.

The striking thing about Warren's position is that it appears to countenance something relatively “unspeakable”—infanticide—in the interest of insuring a very personal and individual right: the supreme right of a woman to control what happens within her body. If autonomy so defined is not a supreme right, what is?²⁰

This signals a severe strain if not a breakdown of the rights tradition she has taken over from the dominant patriarchal culture. Without saying more, our intuitions about the wrongness of infanticide are at stake. We will have more to say about Warren and the rights tradition. In particular, we will explore Kant's apparently radical way out which simply excuses women altogether from the subject of morality so whatever they do to clear non-persons it is not our business as bystanders to judge with the same kind of surety that applies elsewhere in morality.

The Famous Violinist

In an influential 1971 article,²¹ Judith Jarvis Thompson takes a different tack on the subject of abortion. She also operates within the same rights tradition as Warren, but she sidesteps the question of whether the fetus is or is not a person in order to focus on the question of how persons (adult or otherwise) acquire rights in the first place and what that entails for the right to abort. She suggests we don't acquire rights over another just because of who or what we are. Rather we get them in virtue of a prior understanding such as a promise or contract, implied or explicit. We gather she is unsure about the ontological status of the fetus and would prefer to work out a different argument that protects the rights she thinks a pregnant woman has vis-à-vis the fetus *even if it is a person*. This leads her ultimately, however, to draw the line more conservatively on what is morally permissible than Warren.

She starts her argument by assuming the fetus is a person. Even if it is a person, she asks, does that mean it can't be aborted? Her answer is mostly no and sometimes yes.

Suppose a famous violinist is desperately in need of being hooked up to someone else's kidneys to stay alive for nine months. Suppose you are kidnapped and hooked up to the violinist by raving fans. The

20 I think this is how almost any woman, *natively*, would *begin* to understand autonomy. Not so with masculine conceptual practice. There is a logic of possession (not so much autonomy) articulated in Locke that may apply, however. Locke takes the body as the paradigm possession, essentially inalienable in a way all other possessions are not. [See my discussion on Locke](#) and the body as paradigm possession.

21 Judith Jarvis Thomson, "A Defense of Abortion," *Philosophy & Public Affairs*, vol. 1, no. 1 (Fall 1971).

violinist has no role in the choice of you as kidnap victim, but you were the one chosen by his fans. You wake up connected to the violinist. Suppose that now it is possible for you to disconnect yourself, if you choose, from the violinist. He would die, of course, if you did. Do you have a right to disconnect yourself? Thompson asks.

The violinist needs access to your body to live. You were not asked to volunteer it. Does the violinist, who is, no question, a full fledged person with the same rights to live as anybody, have a moral right to force you to let him stay connected to you?

Thompson concludes the answer is no. The moral right the violinist has to live is no greater than your moral right to control access to your body. You gave no one access to it so no one has acquired a right to it. Morally speaking, you may disconnect yourself, in this case, at any point.

Needless to say, it would be generous of you to let the innocent violinist have access to your body and let him live, but that would be an act of kindness that is over and above what can be morally required of anybody.

The analogy, here, is of course with rape. The fetus is blameless, possibly valued by others—perhaps society at large, and being supposed a person (in Thompson's argument) it has a right to live like any other person, but, like others with a right to live, it does not have the right to take away anyone else's right to control access to their body, not even if it means death for the dependent person or fetus. (Notice Thompson's analogy is sex-blind: the person kidnapped might be male.) Thompson clearly implies that a woman has a right to abort in the case of rape.

But there are other, somewhat more controversial, cases to consider.

People Seeds

Next, Thompson asks us to imagine that there are people seeds floating freely in the air that, should they enter your house and settle on your carpet, would sprout into people and become your responsibility. Let's say this can be prevented from happening by having special filters at your windows and doors. Further suppose you have been responsible enough to have those filters in place. But somehow a seed gets through to your carpet and sprouts. May you destroy this person? Again, assume once sprouted, these are people with rights, including that to live.

Thompson says, yes, you may destroy this unwanted person if that is the only way for them to vacate your space now. As long as you take reasonable precautions to prevent the sprouting from happening, you have not given up any rights not to share your abode with anyone else. As before, you may choose to take on the responsibility but this new person has not gained any rights over your space. You did not volunteer your space.

Here, Thompson has in mind unwanted pregnancy against which reasonable precautions were taken. It might be said the precautions were not stringent enough. Someone might say the way to have prevented this was not to have windows and doors so as never to risk this happening. Someone might say that the

way to absolutely prevent any possibility of injuring or killing someone with your automobile is never to venture out in it. Would that be a reasonable demand? Most would say no. Apparently, we are perfectly comfortable with killing vast numbers of innocent people each year rather than restrict our use of motorized vehicles. Thompson thinks that sexual intercourse is a normal and healthy part of an adult person's life. Nothing we do is without risk and we cannot demand abstinence as the price of avoiding any possibility of persons being killed.

When rights fall flat

All along Thompson has assumed a fetus is a person capable of having or being invested with rights such as the right to live. And still, up to this point in her analogies, she believes the fetus may be destroyed if its existence threatens the rights of the mother. But there are two important situations yet that occasion abortion. The case where reasonable precautions were *not* taken. And the case where the right to exist was openly granted the fetus then retracted by the mother.

The second of these two is clear cut. Thompson's answer is no: an abortion is wrong in that case. A woman who willingly gets pregnant essentially confers a right to live upon the fetus. She has made a solemn promise to a person about a serious matter—about as serious as possible. She cannot decide after the fact that a trip to Europe would be more fun just now than carrying a fetus to term. A fetus is a person with serious interests at stake. Interests this serious cannot be taken lightly.

The assumption that the fetus is a person from the start now has the effect that the fetus can be the recipient of a promise and be harmed if the promise is broken. It is straightforwardly immoral to break a promise. Thompson here parts company with Warren who does not view a fetus as a person with the possibility of having rights or having promises made to it.

Finally, there is the case of careless pregnancy. Here, the case is more difficult because there are many degrees of carelessness which have to be balanced with other human exigencies. Among all the projects that a human being may undertake, that of bringing a person into being is second to none in gravity and one should come to it with all the wisdom imaginable. *But nature thinks otherwise.* Should a young person really be held to the same standards of moral behavior as a fully mature one? Just when does morality have a right to bear down so hard on us?

This is the background against which moral qualms operate: It is no accident that nature makes our bodies mature much faster than our minds. The imperative to reproduce is more important than either the survival of any given individual or the wisdom of it. Nature could not care less if this one fetus is aborted. There will be many more. Embryos are thrown against the wall of the uterus to see which sticks, as spermatozoa were earlier against an ovum. Nature couldn't care less whether, having been brought to term, the fetus, or what comes of it, will be in or causes any amount of misery. Misery and death mean nothing. Only the numbers matter and even those not for long.

Against this background we insert our scruples and the question becomes when should we start caring and demand that others care? There is no reason to think that one moment pre-persons or persons don't count and the next suddenly they do. Or that as agents one moment we are innocent and guilty of

murder the next. The valuation process is gradual and invariably lags behind nature's rush to see things repeat themselves. There is evolutionary advantage in being stupid about sex, in delaying scruples until the damage is done.

This gray area is morally ugly for anyone like Thompson who entertains the personhood of the fetus and trusts the rights-conferring power of our words and actions because it requires that something be said about how we acquire deep knowledge of our rights-conferring power. We need to have experienced the enormity of making and breaking promises. *The gray area may in fact describe the condition in which most morally problematic cases of abortion actually happen.* And this is exactly where Thompson's analogies fail to give clear guidance.

But Thompson helps us delimit the problem area, setting the scene for another approach that focuses, not on scripts about abstract rights or somewhat arbitrary castings of personhood, but on character development.

Winging it

Character development is the focus of virtue theory. Rosalind Hursthouse offers a virtue theorist's account of the stakes in abortion²² which I will sketch now with a few comments.

Virtue theory is much older than rights theory. Aristotle asked what the good of thing was and then went on to asked it, specifically, of human beings. The good of a thing is closely tied to its highest function, what it excels at. After eliminating things that we shared with non-humans he fixed on our peculiar ability to set rational goals and arrange our lives to achieve them as the particular good of our kind. There may be more than one rational goal but among them wisdom, he thought, was the highest. Wisdom here seems to mean the ability to contemplate and judge things dispassionately. That can only happen after one has tamed one's passions. Among the supposed realizations of wisdom is that our proper earthly goal is to "flourish." To flourish is not the same as living a life of painless pleasure or happiness. Flourishing is what happens when we exercise what is unique to us, our reason, in the interest of achieving a stable balance that would ultimately allow us to reach wisdom. Wisdom is regarding and judging dispassionately the quality of our lives as measured with what is most excellent about us: our rational capability. Morality is that capability in action. A modicum of peace and material comfort is requisite, however, otherwise we will not be in the position to appreciate and value the luxury of wisdom. But happiness is never per se the goal. Out of our will guided by reason in long contention with our passions and appetites comes *virtue*—the starting point for wisdom. And out of that the only happiness worthy of the kind of being we are.

Wisdom is something attained, if at all, near the end of life. The better part of one's life is spent in training to be virtuous which is a state which must precede the possibility of wisdom. Aristotle said young persons cannot be virtuous (still less "wise") because, although they may perform virtuous acts, they still struggle in doing so. True virtue comes only when the right action follows almost second nature, when it becomes habit. Nevertheless, one must start the long process of becoming virtuous by

22 Rosalind Hursthouse, "Virtue Theory and Abortion," *Philosophy and Public Affairs*, vol. 20, issue 3 (Summer, 1991), 223-246.

practicing virtuous acts as a young person.

But what is a virtuous act? In broad outlines, we have already said that it is one that is conducive to flourishing, but in practice what that means is not easy for a novice to discern. Aristotle says you initially get the idea of what it is right to do from observing and emulating the actions of those in your community who are regarded as paragons of virtue. You adopt them as role models. You do as they do. Never mind that you may not fully understand why. With much effort on your part and the fullness of time, you are led to believe you will one day understand and, when that happens, you will be well on your way to *being* virtuous rather than just *doing* virtuous acts.

A virtue theorist conceives of ethics as mainly about the development of virtuous character. So the good for the virtue theorist lies not in the act itself but in *what the act says about or does to the actor*. Except perhaps to fail to develop one's character when one might have, absolute wrongs are scarcely categorical for the virtue theorist.

So there are not going to be many useful absolute rights and wrongs in virtue theory as there are in other moral theories. You latch on to a good role model and then wing it. (Needless to say, there are all kinds of worries we might have about this formula for being good but we leave them for another time.)

What does virtue theory say about abortion? Hursthouse tries to give an answer:

To begin, *forget personhood*—or when it begins, and *forget rights*—or how they come into being. For the virtue theorist, whether what you do is right or wrong is going to be determined by the kind of person *you* are or at least want to be, not abstract definitions and suspiciously conferred privileges.

What would a rational, decent, but all-too-human, woman do, faced with an unwanted pregnancy? Such a woman would think really hard about it, consider every angle: the life that would be discarded, its quality; the ability of its mother to do the right thing by this new life and to provide for it and to be happy in doing so; the availability of help from others, beginning, of course, with the father; the full and future impact on the person uniquely responsible for how this new life begins, that is, the mother herself; the impact on others in the community; the message the choice will send; and so forth. Everything is in play: natural and personal imperative, family and societal pressure, belief systems, self-worth, the dreams, the happiness and fulfillment of every one involved. And in, at least, some attenuated sense everyone *is* involved, but definitely some more than others. And some now and some later. And since we are addressing the morality of an act, whether to confer or abort life, most important of all is *the good of the actor*: the mother. (The fetus, person or not, is not a moral actor here.) How is what she is going to do going to affect her virtue? There is not going to be a simple answer to what she should or should not do. All will depend on how she handles the decision and consequences in her circumstances.

Let's pause to appreciate that this is an incredibly difficult situation for any human being, even the wisest of us, let alone for a young person. It is the closest most individuals will ever come to being in the moral position a state is (or should be) in when it considers whether to declare war.²³

23 The responsibility to formally declare is shirked by governments, it appears, these days, in favor of international "police actions." The moral enormity of the act is thereby obfuscated. The same happens when "legal actions" are taken to apply to abortion. There is clearly a sense in which laws restricting abortion are actually immoral because they attempt to preclude opportunities for virtuous *action* in favor of enforcing prima facie virtuous *behavior*. Something similar

In one case, aborting the child will be a bad choice. In another, the only one that makes any sense. In many cases, there will be no deciding but a decision will be made. No decision is a decision. Virtue comes into play in how that decision is made and, once made, how it is carried out. That is how we know whether the act of aborting a fetus is right or wrong. We may know in advance. We may not know until later. It is entirely possible there may never be a clear answer.

In virtue theory, no actor acts in isolation. There is a community that creates the values that the actor will have to juggle. *But there is no opportunity to practice virtue if the individual cannot choose among them.*

I think I have given some indication of how Hursthouse addresses the real abortion problem. The concrete one. The answer is that there is no one general answer as to whether abortion is moral.

In the course of her discussion, Hursthouse makes a passing comment that is of great interest to me. She says that “nature bears harder on women.” The implication is that abortion is *prima facie* wrong *but in a special way*. It is a revealing admission that I will make much of later.

But before I conclude with my own view, I want to consider one more interesting position—this time by a man. Opinions have sexes and sex matters. This one is at the other end of the moral autism spectrum from virtue theory.

Life as a glass of wine

Most of us are familiar with the religious arguments for the sanctity of life and against abortion. I will not be discussing them directly here beyond the argument form presented at the beginning.²⁴ It may come as a surprise to those set on the right of a woman to abort her fetus to learn that there is a formidable argument against abortion that is not founded on religious doctrine. Don Marquis²⁵ offers a way of looking at the destruction of a fetus that shows it to be among the very worst things we might do. And his argument depends only on assumptions that a hedonic moral philosophy would espouse.

Life *per se* is not sacred in Marquis' argument. Life just is the most wonderful thing we can imagine because anything that could possibly be wonderful is always *contained* in it. *Nothing that has value exists outside of life*. It is the container for all that is good. Marquis offers a rather pure utilitarian argument. A utilitarian believes that pleasure, or at least the minimization of pain, is the ultimate standard of what is good or desirable. More pleasure is better than less and either is better than pain or no experience at all.

Marquis comes to his abortion view by considering what makes taking away *any* life a bad thing. To take someone's life is to rob them of *a future life like ours*. We all value the continuity of our lives because we expect—or most of us are in a position to hope—that tomorrow and the days after will

happens when we hear “mistakes were made” instead of “___made a mistake.”

24 See note 9 on Noonan.

25 Don Marquis, "Why Abortion is Immoral," *The Journal of Philosophy*, vol. 86, issue 4 (April, 1989), 183-202.

bring us more opportunities to experience some measure of gratification. Whatever else it might bring, we focus on this bright side and that is what gives value to a future like ours. A “future life like ours” becomes a term of art for Marquis: a veritable technical term. It is the thing that contains value, the only thing that *can*, and its loss is the ultimate calamity that might befall us. (An afterlife plays no role in this calculus.)

We might think of life as a glass²⁶ filled with liquid value. Break the glass and it's all over.

So what makes killing a human being wrong is the fact that you rob her or him of a future like ours. There will cease to be anything to contain value for them. But utilitarians *measure* value. More is always better. Kill a middle-aged adult and you rob them of half their life. Their glass was still half full when broken. Killing a young adult is worse. Their glass was mostly full. Killing an elderly person is less of a tragedy. Their glass was nearly empty anyway. A new born's is full almost to the rim. And so killing an infant is up there among the baddest things. (Actually, even non-utilitarians sometimes talk this way.)

But not quite the baddest thing. There is one kind of killing that is worse than any of these. The one who has the most to lose, whose glass is overfull or as full as it is ever going to be is that of the unborn fetus whose entire life, even birth, lies ahead of it: *the worst thing of all is to kill a fetus*. This is the worst imaginable killing for one who believes that the principle value of life is the quantity of it left you.

Notice that this conclusion does not presume anything about the personhood of the fetus. You can call the fetus what you want but the fact is, in the normal course of events, there will be a “future life like ours” in store for it. And a future life like that is all that contains, or has ever contained, value. *That, and that alone, is all it takes to make the destruction of a fetus bad.*

Notice also that in any contest of “life assets” between the mother and the fetus, the fetus wins hands down. The mother has already consumed a respectable share of her life. The fetus next to none at all. If it is only one *or* the other who may live, it should be the fetus.

Finally, notice that it is not that the fetus has any special right to live that the mother doesn't. It is simply that the fetus has *more* life to live, period. “Rights,” for a consequentialist, do not have significance unless they can be shown to maximize, in this case, life: the sheer quantity of it,

26 A measuring cup with gradations is perhaps a better image than a glass of wine. Tom Regan uses a similar analogy to characterize utilitarianism: "...a cup contains different liquids, sometimes sweet, sometimes bitter, sometimes a mix of the two. What has value are the liquids: the sweeter the better, the bitterer the worse. The cup, the container, has no value. It is what goes into it, not what they go into, that has value. For the utilitarian, you and I are like the cup: we have no value as individuals and thus no equal value. What has value is what goes into us, what we serve as receptacles for: our feelings of satisfaction have positive value, our feelings of frustration negative value." From *In Defense of Animals*, edited by Peter Singer (Oxford: Basil Blackwell, Inc., 1985), pp.13-26. Online:

<http://www.animal-rights-library.com/texts-m/regan03.htm>. Regan, of course, is thinking of classic Benthamite utility as measured in pleasures and pains. Marquis seems to have a purer form of utility in mind than even Bentham's, even a meta-utility. For him, it is the cup or vessel that has the value because it is the *sine qua non* for liquids/experience of any kind, sweet or bitter. Peter Singer comes out in a different place on abortion; but in Singer's general insistence on the having of interests, which requires a minimal consciousness, as requisite for moral consideration, there is a *valuing* of consciousness. This valuing of consciousness is, it seems, a Kantian importation. Singer's utilitarianism is compromised with extraneous values. Marquis's is by comparison fascinatingly pure.

irrespective of anyone's share in particular. One might ask if quality counts. And the answer might be yes, but again other things being equal, there is no reason to think that the quality of the life in store for the fetus shall be any less than that in store for the remainder of its mother's life. (If you believe in "progress"—the fetus will enjoy a *better*, as well as *longer*, life.) But quality of life is not a big issue for Marquis. If we knew, for instance, that the life of the fetus would be "solitary, poor, nasty, brutish and short," (as Hobbes said of life in the state of nature)—an unthinkable, holy misery, whose only saving grace is that it would be severely truncated, we might draw a conclusion in favor of the mother, who still has wine in her glass, after all, not poison (as in the case of a fetus with severely debilitating deformities). So Marquis grants this concession to the mother. But that doesn't describe the typical case of abortion.

Marquis argues that in the typical case it is very wrong to destroy a fetus—*more wrong, in fact, than killing an adult*.

In defense of Marquis, intuitively, at least, many people much of the time do talk and behave as though children were treasures greater than anything else we might care to compare them with. Surely a part of that sentiment must derive from an appreciation of the *magnitude* of their futures relative to that of their parents. In a moment of extreme duress, a mother or father will put their life in harm's way to save, if possible, their child's. A parent may come to see their children as their most valuable possession, bar none, even the parent's own life. Something like the logic Marquis works out must be operating here.²⁷

One qualm with Marquis's moral logic, however, is obvious: do people, like perishable goods, really *lose* value the longer they are exposed to air? Is a toddler in diapers really more valuable than an elder with a cane? Is the fetus really the most precious of all? And is this simply in virtue of the age difference, the fact that one has a full glass and the other's is nearly empty?

There are venerable moral theories, both Eastern and Western, that would reverse Marquis's ranking. In Aristotle's view, for example, which we discussed above, young people (not to mention infants and fetuses) barely count as moral beings.²⁸ In theories like Kant's (from which rights theories like Warren's and Thompson's in part derive), the young, rationally immature, do not count at all except vicariously through the respect we owe the rational adults to whom they may matter. (And, indeed, the young may matter in *some* degree to the affections of almost any one.) In any theory that prizes the exercise of reason as a condition of ethical behavior, fetuses and children will not rank high because of the lack of this innate or situational feature. (And if it is the capability of being rationally responsible that counts, it is only in degree that fetuses and small children differ: that is to say, not much.)

But in Marquis's account, the "old fart" is just about as valuable as the phrase implies. A lifetime of accumulated experience and wisdom does not add value to the person.²⁹ Rather, it indicates that the end

27 Interpreted narrowly, as Marquis himself seems to invite, his argument only gestures at the *presumptive* wrongness of killing. Presumptive wrongness does not rule out that there may be overriding considerations that cut the other way, nor does it preclude collateral reasons for finding any kind of killing wrong. But Marquis shows little patience with Kantian casuistry. His analysis offers undeniable insight into common intuitions about why killing is held in such low regard. But, as a convincing argument against abortion, his argument illustrates the limitations of utility as a measure of anything ultimate. I will say more shortly about this.

28 Marquis considers himself a kind of Aristotelian "animalist." Biological functions seem to be the source of value in living things. Yet, Aristotle's explicit reluctance to place moral value in youth is very un-Marquisian.

29 Though the lives of the old may add to future life, theirs or that of others—what is left of it. The likelihood that

is near and if we bother to care for such people it is because this caring must bring some joy or relief to others, assuming they exist, who find that it adds something to their lives present and future. In and for themselves, aging persons spiral in on worthlessness.

If this sounds cold-hearted, it is because we live in a culture that indulges warmth of heart (rather selectively, of course). It is important to notice, however, that not all cultures have or have had this luxury. Consider the Inuit treatment of their decrepit elders: the rational thing to do may be quite icy.³⁰ There is nothing intrinsically moral about being warm-hearted, at least not to a utilitarian.³¹

Marquis is not being particularly sentimental about children, babies, and fetuses. It just so happens that for a moral theory that values in a basic way opportunities for non-hellish, conscious experiences in some degree, these are the most *ample* containers of such opportunities.

The deeper problem with Marquis's account and why it is included among the views discussed here lies elsewhere. I consider Marquis's account a telling instance of what is wrong with utilitarian views generally. To their credit, utilitarians are very good at biting the bullet when it comes to consequences.³² Often what they see as an instance of *modus ponens* (as in “if this, then that; this; so there”), turns out to be a *reductio ad absurdum* or what happens when you give an idea enough rope. But they sometimes succeed so well at making their point that they force those of us who may have initially shared their premises to re-think them rather than accept the conclusion. This is, of course, not to say that utilitarians inevitably reach the wrong moral conclusion; only that the field of their starting considerations is always too narrow—for *beings like us*.³³

The real problem with a view on abortion like Marquis's points our discussion in another direction.

Part II: Lessons taken from these views on the morality of abortion

Utility and women

In the realm of ethics, the notion of *rights* is little more than three centuries old, that of *utility* less, that of *virtue* two millenia. But that of *care* we must assume is pre-historic.

There seem to be very few utilitarian philosophers who are women. Mary Wollstonecraft and Harriet Taylor Mill are sometimes counted among the classic utilitarians but a close look at their views, I think,

“experience and wisdom” may have salutary consequences for someone’s future life may certainly factor in. But that likelihood clearly diminishes with age as our time to enjoy those consequences runs out. It is not clear that the “experience and wisdom” of a woman during her childbearing years is going to trump the potentially greater quantity of it in store for the fetus. There is some reason to think the “experience and wisdom” the fetus *will have* one day at the mother's age will exceed hers *now*.

30 Early missionaries tell of those too frail to hold their own among the rigors of Inuit nomadic life being deliberately stranded on ice floes and left to die. But senilicide is hardly unique to Inuit culture. It may be rationally defensible in any culture in sufficiently dire physical conditions.

31 David Hume *supplemented* his utilitarianism with a certain capability for fellow-feeling. More about this later.

32 Peter Singer's work is famously brave in this regard.

33 Moral philosophers, to the extent they are right, are quixotic as it is. Utilitarians are unabashedly so.

shows only a superficial resemblance to theories like those of Godwin, Bentham or J. S. Mill. It is never quite utility per se that interests these women. Nor if it had been, would it have been conceived in the impoverished way it was by their male contemporaries. These women were utilitarians as people born in an English-speaking country have a relation to England, not as those who were actually born in London. They speak a language they were born into as contrasted with one in which they may necessarily trace the history of their being.

By far, most contemporary women ethical theorists fall into one of the three competing camps to utilitarianism: Women *virtue* theorists abound. Alternatively, women show themselves partial to *care-based* theories which describe morality as about developing and encouraging a natural tendency to be social, i.e., to create, foster, and engage in human relationships. Finally, and perhaps most remarkably, even *Kant* gets a strikingly large share of his best interpreters from among the ranks of women. I will have more to say about this, on one level, counter intuitive appeal Kant has for women. But the general reticence of women thinkers toward utilitarianism, though, is also revealing.

If pure ethical utilitarians seem to be scarce among women—certainly there are none like Bentham and only vaguely like (the already vague) Mill, why should this be and why should this matter? I think it is *because it is* that it matters.

It is because utilitarianism fills a peculiar place among the major contending ethical theories. It seeks the maximization of *one parameter* of existence, namely, happiness, usually more narrowly defined as the minimization of pain (or dissatisfaction), at the expense of other possible values. It is a principle-based theory without the benefit of a fully featured psychology behind it. Kant's theory is principle-based also but at least has a plausible and adequately sophisticated, if still partial, moral psychology to support it. More on this later.

But first, I have to sort the field of major ethical theories into those that are foundational and those that are better described as moral heuristics, strategies, or rules of thumb. A *foundational ethical theory* is one that gestures at *why* a certain way of being or doing matters in some way, not just *that* it matters or how we should go about expressing it in judgment and action. By contrast, a *moral heuristic* does exactly the latter: it assumes an ostensible ideal, then attempts when possible to guide our action in the service of the ideal. A moral heuristic, unlike a foundational theory, does not tell us why the ideal is what it is. To be told why the moral ideal is what it is is to tell or imply some story about how that ideal is grounded in something peculiar to the kind of being who is to be guided by it. This brings us to the moral ontology of agents—or *who* is theorizing and for *whom*?

I am going to say that there are *only two* genuinely distinct and foundational moral theories: these are some variation of what I will call *care-based* theory and some variation of *duty-based* theory. I will argue also that the reason this is so has everything to do with the answer to the moral ontology questions.

Care

Care-based theories, as they are sometimes called in modern parlance, have been around in one guise or another for a long time. In this fairly broad class, I would place the 18th Century moral sense theories

(Hutcheson, Shaftsbury, Hume, et al.), moral intuitionism (G. E. Moore), various communitarian theories (including Marxist ones), and, most revealingly, many feminist views (Annette Baier, Nell Noddings, Carol Gilligan, et al.) These theories essentially assert that most of us most of the time are capable of being motivated to act with empathy and concern for others. This capability, not necessarily its manifestation, is innate. It is not a conclusion reached through abstract reasoning. There are many ways to spell out the relation of reason to morality but the *subservience* of reason is characteristic of these accounts. Hume put it succinctly: reason is the slave of passion. Passion, feeling, concern, empathy, benevolence, magnanimity, fellow-feeling, etc. must be presupposed in any explanation of doing or being good. The role of reason is instrumental. Having the right feelings, we enlist the aid of reason to productively express them.

Care-based theories show their foundational character by answering the question about the source of normativity—that is, where value comes from in the first place. It comes about organically because of the fact that most people most of the time care in some degree about—at least some—others. *The point of morality is to increase the number of people caring, the range of the objects of their caring, and the amount of time spent caring.* The natural tendency to care is to be nurtured and developed. Ethics essentially consists in this. To ask why we have that tendency is to ask a question about nature. It becomes properly a scientific, not philosophical, question. Given that we have the capability of “playing nice” (not to put too fine a point on it), philosophy may have something to say about how best we should manage it. But caring is a mandate of nature and, like everything else in nature, full of exception, troubled by competing mandates, yet less troubled by contradiction and baroque complexity than, say, the imperatives of principle-based theories.

One thing care-based theories shy away from are hard and fast rules. Principles and rules, the handmaids of reason, can be helpful but they do not define or justify morality. You will not find monolithic principles like the principle of utility or commands from on high such as Kantian imperatives. There is never any one thing to maximize or minimize or conform to. There is a rough picture of peace and harmony among various orders of sentience, and all ways of realizing that picture are game.

In these theories, ethics happens not through rules, in actions specifically, or even in the character of agents but in the space between people: in *relationship*. The most primal relationship imaginable is that between mother and child.

Duty

Duty-based theories are founded on the primacy of reason. Immanuel Kant's is the most thoroughly articulated and influential such theory. Contractarian and rights-based moral theories are close relatives. Unlike the care-based view of how people should behave, duty implies active resistance, not the relative passive resistance of unmolded impulse and velleity, where people get carroled and stucked into line or their characters shaped as weather shapes mountains or rivers their banks. In the latter, there is assumed at least an openness if not an active willingness to cooperate.

Duty is imposed from without on *innate intransigence*. It implies a will to tame, a will that comes to view itself as autonomous, as able to direct itself. The will is conscious of itself being free to orient

itself according to a rule—or *not*. Out of this consciousness responsibility is born. A rule or principle is the core tool for orienting the will. It is the trellis to which the vine of desire, impulse, habit, even environment must be made to conform. Duty has the essential character of imperative that Kant accurately captured. It abstracts from everything human but a naked will and subjects that to rational scrutiny and stricture.³⁴

Elsewhere I expound on the metaphysics involved in these two types of foundational moral theory but here I want to stay with the physics—more specifically, the *physiology*, behind the types.

The reason there are only these two types of theories is because *there are only two natural kinds of human being: women and men*.³⁵

Pause and deep breath

I wish it were needless to say—apparently, it is not—that there is nothing in the view I present here that prevents a woman from experiencing something of the archetypally masculine way of experiencing the world or for a man to do the corresponding thing. Nothing in what I say prevents the possibility that individuals of either sex are mixtures in whatever degree of these types. Indeed, I think the mongrel nature of sex in *actual* individuals (as opposed to abstract types) is typical and necessary to explain what recognition and understanding exists between the sexes. Nevertheless, there is plenty in the understanding of the matter I offer that is apparently not transparent. (Or, at least, the more or less progressive audience I specifically address, seems embarrassed to remark on its opaqueness.) For the sake of getting clear about the distinct forces involved, I will stress that there are characteristically feminine and characteristically masculine ways of experiencing the world whose differences are profound and color every judgment we make about humans generally. This is especially and critically so in ethics because so much else in culture and civilization depends of it.³⁶

So, the short list of types of foundational theories above corresponds to the obvious fact that our

34 Actually, this is not quite true, Kant's moral theory insists on one very peculiar *feeling*: the capacity to feel awed by abstraction. A human act is only moral when it is done out of *respect* for the moral law. It is never enough merely to be in accord with the dictates of the law. The susceptibility to a *feeling* of respect is no minor concession to humanity in Kant. There can be absolutely no element of fear in this awe, for fear is no moral motive at all for him. Love, though not moral, may be forgiven. Fear is morally unforgivable. This points to a great mystery at the heart of Kant's moral philosophy which I discuss elsewhere. One thing is clear, however: the capacity to be awed by abstraction is quintessentially a *masculine* virtue—or liability, as the case may be. Or so I will argue.

35 I am aware that insisting on women and men as distinct natural kinds is controversial. I will address, for example, John Dupré's attack on the distinction elsewhere.

36 Though I only hint at it here, I am suggesting that the conceptual world (no less than the perceptual world) of women and men is so radically different from that of the other that the apparent functional consensus or *modus vivendi* between them *ought* to be an object of wonder. Elsewhere I address, for example, the notions of freedom/liberty/autonomy and the different roles the idea plays in the intellectual economy of each. To understand this we might borrow the ideas of "overlapping consensus" of function across justificational differences from John Rawls and Charles Taylor. The communicative consensus, such as it is, that obtains across sex lines may help us illuminate cross cultural talk of value: what the distinctively Western notion about "human rights," for example, corresponds to in cultures in which that notion as we in the West conceive it is not native. There are opportunities for conceptual enrichment on all sides. But the point here is that differences have to be faced and apprehended first before we escape the exploitative tendencies of facile universalism. In this way, we may be further along in political philosophy than we are in basic moral philosophy which is something of a scandal.

species is sexually bifurcated, i.e., gonochoristic. If I am anywhere near being right, you should be able to guess which type goes with which sex. There is a vast amount to be said about this, some of which I discuss elsewhere.³⁷ But here I want to finish my typology and then hone in on what it says about the very concrete problem of abortion and ethics.

The philosophical views on the abortion problem discussed above were selected because of their now classic status in the modern literature on the subject. You may notice that a specifically care-based orientation is missing.³⁸ But I think that orientation is a more or less hidden gravitational force distorting the orbit of visible theory, especially when propounded by women.³⁹ Warren and Thompson both attempt to fit a principle-based view onto the subject. Each assumes that “rights” matter, more for Thompson than for Warren, and then proceeds to see how they might be construed to justify the intuition that abortion is permissible in at least some circumstances, more such for Warren than for Thompson.⁴⁰

Framing concepts in this debate like “personhood” and “rights” have histories that arise out of moral quandaries that are traditionally and constitutionally male. Even the concept of “murder” is quintessentially male.⁴¹ The definitions are important because they frame what is and is not permissible to what is taken as a free-ranging will. A free-ranging will is the starting point from a native masculine standpoint. How do we both honor and constrain such a will?

But why should we defer so much to the concept of will in the first place? Why does our will need such elbow room? Freedom or liberty is a hallowed idea in our culture. Why?

Historians of ideas will tell you the prominence of the idea of autonomy is rooted in the rise of mercantile classes in the Middle ages who needed a conceptual framework within which to assert their material interests against the entrenched and less liberty-needing culture of privilege and status grounded in real property. Evolutionary biologists will tell you it has to do with the fact that males make themselves and their genes indispensable by taking chances and, occasionally, succeeding in improving the chances for survival of their species. They are wired to push boundaries. Latitude and

37 But if you have any doubts the *moral* world is radically bifurcated, I suggest looking at a discussion of just one very salient aspect of the fallout from this assertion: the difference in moral and legal intransigence as discussed in Bianco Luno's commentary on a debate between June Stephenson and Roy F. Baumeister: <http://phlogma.com/?p=177>.

38 An early sketch of it may be found in Carol Gilligan's *In a Different Voice*. Care-based moral theory, developed as such, and connected with the feminine interest in, and prioritization of, relationship is still not fully accepted on a par with deontology and consequentialism. It is part of my aim here to press the case that care-based theory is more foundational than consequentialism and on a par with deontology. If I am right, there is explanation, if not quite justification, for why this has been so.

39 And the reason for the asymmetry—why I am not saying that a duty-based orientation distorts the opinions of men on the subject of abortion is because their language and conceptual schemes have unfortunately been the background against which most discussion has usually taken place. You don't notice that the sun distorts the “color” of natural things—because you first learn of colors in sunlight.

40 There is a tight connection between the concepts of “rights” and “personhood.”

41 The idea that we may subsume abortion and infanticide under the single rubric of “murder” might be interpreted as a way of balancing an ostensibly lopsided scale of moral depravity. If we leave abortion and infanticide out of account, murder is almost exclusively committed by males. The number of girls and women who kill non-fetus or non-offspring victims is negligible. When it happens, it is worthy of comment, not statistic. *How can we pretend that human-created evil is sex blind? As a rule, murderers are men.* If that speaks to an unacceptable imbalance of relative depravity, we may be inclined to achieve parity by insisting that abortion is a form of murder. In this way, we may argue that men on balance are no more inclined to evil than women. I think this is the only way to make sense of the gross imbalance—*assuming* we perceive the imbalance a problem as the moral equality theorist is obliged to do.

boundary are correlative ideas.

In either story, males play the *instigating* role. The traditional concepts of morality arose from a need to curb the excesses of a perceived pre-existing, untrammelled will and channel its energy in a constructive direction. But on whichever story of how autonomy achieved its grip on our culture we focus, the idea is deep and pervasive.⁴² It is so all-pervasive that a whole branch—the dominant one, in fact—of Western feminism still argues within a framework that is patriarchal. It still uses the language of rights, autonomy, and equality—all of which have special meaning in history and that meaning was originally established in the power struggles—not of sexless—but of *male* beings, specifically.

Admittedly, the masculine idea of rights is adapted by some women thinkers. Rights are reinterpreted but they retain enough of their origin in the interests of men that they apply only with serious strain to problems that are proprietary to women. The idea that a woman should have a right to control her own body, for instance, suggests that a woman's body is her possession like his land might be to a farmer. This way of conceiving of her body will lead to odd talk that sounds disconnected from reality especially when coupled with legalistic definitions of personhood, another masculine importation. The farmer sweats the boundaries of his property. Much rides on clarity about this for him. Does—more importantly—*should* a woman sweat the boundaries of her body? The awkwardness is evident in Warren's account. It forces her even to entertain the idea of the personhood of fetuses and small children as though the personhood of a child, born or unborn, was ever a strict primal concern of its mother. The personhood of beings matters only when there is a sufficient *distance* between the one so characterized and the one characterizing. Men always have that almost literal arms-length relation to another, women not always. Such talk is tellingly awkward in any relation between a mother and child.

It would be a more correct way to picture a woman as being one with her body and, in diminishing degree, all the space around her. Her already born children are still a part of her only a little less than a fetus. Whatever “rules”⁴³ govern her behavior toward one operate with more or less force with regard toward the other. Perhaps she never entirely loses certain prerogatives toward her offspring even when they become adults. The idea harks back to ancient conceptions of mother-right that precede patriarchy, conceptually as well as historically.⁴⁴

42 I won't argue it here, but the obsession with autonomy and the requisite attending discipline is evident in non-Western cultures as well, though usually in more spiritualized guise.

43 Not to be confused with what a male moral theorist implies by “rules.” “Practices” may be a better word.

44 “A more correct way” in this context. The first reaction rightly occurring to someone keenly aware of how this picture, hardly new, has been exploited to justify the use and abuse of women is one of wariness. The suggestion that a woman's boundaries are not constitutionally as clear as that of a man has been used to justify the violability of women in rape or physical abuse, for example. My point here is that *any* picture of women (and there are only a limited number of them) will be used to her detriment. And almost *any* picture can be used to counter that effect. The point is not that there is an objective picture outside of any context that accurately describes women—or men. It is that there is no such context on these matters that is contextless: in the sense that there is the view from female side and the view from the male side *and no other*. Any attempt to step into a sexless dimension where an “unbiased” truth of the matter can be apprehended is either cover for abuse or an aspiration requiring more imagination than we may pass over without comment. The present discussion of the conceptual schemes in which abortion is typically framed illustrates the former. We abuse our conclusions or the reasons for them. *Who* posits the picture and *their aim* are all too relevant.

I am indeed arguing for a kind of **moral relativism**. Sex frames and colors moral judgment. That said, the dynamics of this kind of moral relativism are uniquely complex and different from the cultural variety. The latter I do not defend. I would not defend an ontology and dependent epistemology behind *any* other form of difference including racial, ethnic, religious, cultural etc. (I leave species difference out of consideration here.)

Fathers genuinely assert their “rights” left and right. They invented the “rights” idea, they in a sense “own” the idea. This is mine, that is yours. Their connection to their offspring, from the get-go a little abstract, has to be earned, has to be carved out, has to be deserved, if not insisted on by law, by document, by institution, by brute force or by holy abstraction... His *natural* right to anything at all, even his life, is insecure... and he *behaves* that way.⁴⁵ He will never have what she has and had before rights were invented ostensibly to provide order—order which he, *more than she*, has always required.

Thompson's account of the conditions under which we acquire rights over another suffers by accommodation. She finds in the idea of a contractual promise, a property—even mercantile—notation, application in the explanation of how it may become incumbent on a woman to carry her child to term. Assume the fetus is a “person” (a concession to a notion required to define boundaries for men), when a promise is made to a “person” it is wrong to break it (another concession necessary to counter a background of intransigence).

I am not saying that notions like freedom, boundaries, or promises have less moral significance for women. (Though it is easy to understand why some philosophers have implied it, even some feminists.) However, fully understanding what roles such notions play in a masculine moral economy makes it clear that these ideas resonate differently within a specifically feminine moral psychology. For her, every stricture is and should be *subservient* to creating and nurturing relationship. The damage that may be done is suffered by the *relationship*. This is *not* how a man⁴⁶ ever sees it from the start. For him, even what is meant by “relationship” is cause for some alarm: his first thought is what he will lose by it or what it says about him that he needs it. A moral relationship becomes a concession extracted from him and not the aspiration it natively presents itself to a woman. He has in the end an eye on some heterocosmic accounting⁴⁷—and that's if he is well-behaved... If he's bad, there is no bottom to how low he will stoop.

The damage that he fears is always to this accounting—in another time, I might have said, his soul. It is that, by whatever name he calls it, which his dignity—his reason for being, his meaning, whatever determines his resolve to take another breath⁴⁸—identifies with. *It is this, not relationship, that ethics relates to for him.*

Traditional moral ideas have the shape they do because men always meant them to apply to *themselves* (and have often *said so* but have been systematically misread).⁴⁹ So, when he seemed to make—to our

45 *Arrogance* has survival value for him, much as *presumption* has for her.

46 I am having constantly to reiterate that when I speak of women or men I am actually speaking of beings consciously suffused with one or the other principle: that is, with those who *identify* with one or the other—never forgetting that nothing precludes “mixture” as Sylviane Agacinski (see below) puts it. The mixture is phenomenologically rich in implications which I do not begin to address here. Still there are real forces tending toward polarity at any given moment in the course of the life of any given sexually conditioned being.

47 An otherworldly orientation is characteristic of maleness: it shows in his style of experiencing the world: it is usually unconscious but at critical moments reveals itself. In Kant's ethics, for example. It is evident as an emphasis, as a peculiar twist men give to every idea that passes through their heads. But I leave the discussion of heterocosmicity for another place.

48 Assuming he does, which is always an open question for him: this shows up in his courtship with death and violence or his relatively uneasy relationship with cosmicity.

49 At least the philosophers I discuss here, especially, Kant. I am not imputing progressive-mindedness to them in saying this. When they said the word “men” they meant *men*, the kind with external genitalia. They were not being sexist by meaning to subsume under the rubric “men” both women and men as some may anachronistically be inclined to think.

politically-jaded ears—snide remarks about women, Kant more or less meant to send women out of the room when morality was being discussed. You might think J. S. Mill the famous exception.⁵⁰ But Mill dealt with it by seeing what he wanted to see in women. It made sense for him to include women *extensionally* in the moral scheme of things on utilitarian grounds. So he made women into honorary men and attributing to them all the same aspirations, most notably, a desire for autonomy in the guise of liberty. It never occurred to him that *what men talk about when they talk about liberty is not the same as what women talk about*.⁵¹ There are as many ways to be sexist as there are men.

The problem with rights/personhood approaches to the question of abortion is that such talk is essentially, not incidentally, masculine. More radical feminisms understand this. If the goal is to make a woman's choice to abort more palatable *to men* perhaps such approaches may help. Maybe. But they also obscure the essential difference between feminine and masculine moral worlds. To say there ought to be no difference between those worlds is to buy into a very old male stratagem: “All that matters is that we are equally human beings: so we can use our ideas⁵² to talk about the lot of us, [mythical] sexless humans. We are all just humans, aren't we?” Such generous rhetorical inclusivity (which we owe to Mill) is at least misguided if not pernicious.

We are all just humans, aren't we? *No, we are not*. Humans are things we aspire to being. “Human beings” as a description of moral actors is vastly further removed from reality than the abstractions, “men” and “women.” The world *as we know it* is populated by children whose genitalia signal, for better or worse, their respective worlds.

Moral Heuristic

That's what I call virtue theory and utilitarianism. We need these and many other moral rules of thumb besides. The fact of the matter is that foundational theories can be next to useless sometimes when the going gets rough. The going gets rough when there are no easy answers, when we fear we will do wrong no matter what we do.⁵³

They were being sexist by simply ignoring women altogether. *Women were simply beyond the moral pale*. Kant all but calls them amoral. Otto Weininger later does explicitly (the misogyny imputed to him is utterly misguided). Nor am I saying there were not unmistakable instances, then as now, of bald resentment toward women. But these cases are either rooted in personal stories (e.g., Strindberg's relationships, Nietzsche's sister, and Schopenhauer's mother) or, more commonly and consequentially, in a kind of groupthink bonding that in males is born of individual cowardice. None of the male thinkers I discuss here fall in these two categories.

50 Author of *The Subjection of Women*, a male feminist classic. But see Luno's commentary:

<http://phlogma.com/philosophy-and-sex/feminism/the-profoundest-knowledge-of-the-laws-of-the-formation-of-character-140>.

51 I discuss this elsewhere but briefly the most meaningful conception of liberty to women is closer to what Isaiah Berlin called “positive” liberty: in essence a freedom to engage or participate. Whereas “negative” liberty is dearer to men: the freedom from outside interference. These two conceptions of freedom, the *prepositional* freedoms, can be fiercely at odds with each other as nearly any political debate should show. See <http://phlogma.com/philosophy-and-sex/gender-differences/berlin-on-freedom-to-and-fro-130>.

52 The ones we, guys, invented while masquerading as generic human beings when, in fact, we were just guys in sexless drag.

53 Kant's murderer at the door scenario, for example: in which a murderer at your door asks the whereabouts, which you know, of his perfectly innocent soon-maybe-to-be victim. Kant says, “Never lie, no matter what. There is never a moral excuse for it.” But under these conditions and with these consequences, the utilitarian urges—rather—*commands* you to

Although some variation on a care-based theory is the most native explanation of moral experience for women, among the major Western accounts, Aristotle's resonates deeply with women as an action-guiding theory. Virtue theory gives us what is ultimately a broad description of the kind of person we ought to be: one situated in a community. The basic precepts are general without being overly abstract. Moreover, they describe a process: the gradual building of character over a lifetime. Very little that is human is totally forbidden in Aristotle's view. Moderation, perspective and the moral health of the individual in relation to others is prescribed. Only a humanly conceivable perfection is set as goal, not the skyscraping heterocosmic one of Kant. Aristotle works for women practically and for the feminine moral experience generally, wherever it inheres, even in men, though in fewer of them and to a lesser degree. Virtue theory is humanly rational, after all. If it doesn't as thoroughly ring true for men as for women, this says something about the specifically masculine experience of rationality—which Aristotle sensibly does not capture. Aristotle is eminently sensible but he is not correct if he intended to reach those most in need of being made moral: *men*.⁵⁴

From the perspective of virtue theory, there is no easy answer for a woman considering abortion. There are a list of considerations she must take into account, that is all. Foremost among them is what this will do to her and how she will live with the decision whatever it might be, keeping in mind that relationship, as much as life, is central to her definition of a person. And morality is about creating and tending relationship.

But the weakness of virtue theory is that it does not explain, except developmentally, how morality comes into being. It does not in the end say *why* I should care if there is no *first inclination* to do so. Its answer is too culturally parochial. The moral inclination will surely take what it needs for content from its environment. The latter invariably obliges. The thing is, for women—most of them most of the time, that first inclination *is* there. We, most of us, owe our existence to its presence. *We cannot say this with such certainty about men*. For him, it is likely a second inclination, an acquired one, and one we fear he is peculiarly liable to revert from under stress.

“Nature bears harder on women,” Rosalind Hursthouse writes. She meant that a woman is designed first to accommodate herself in the human and cosmic order of things. Assertion comes after she sees it necessary to enable further accommodation. Utter failure to accommodate is tantamount to a loss of meaning.

It is almost exactly the reverse for a man. He accommodates in order to find the strength to further assert. What bears down on him most immediately is the vision he has of himself. Traditional (i.e., masculine) morality insists on being the arbiter of that vision. It makes demands on him that he ignores at great peril.

Each sex has its own liability and weakness. They are not the same.

I return to the question why there are so few female utilitarian philosophers.⁵⁵ As earlier suggested,

lie.

54 I use the term “sensible” to mean roughly what common sense would dictate. “Common sense” is perfectly content to let sleeping dogs lie. Truth at any cost is never its priority.

55 A metasurvey of mostly professional philosophers revealed that most overestimated the number of their colleagues who were utilitarians (aka, consequentialists). They thought there would be more utilitarians than deontologists overall. The

utilitarianism neither explains, nor rings true to, her experience of what matters. In stark contrast to Aristotle's rich notion of human flourishing, the utilitarian calculus with its simple hedonic prescription to maximize happiness or, failing that, minimize unhappiness must strike her more sophisticated sense of a life worth living as horribly impoverished. It is morally autistic. The idea smacks of a last resort available only in moral emergencies. And, indeed, that is when utility shines. But moral emergencies are to be avoided, not courted or enjoyed or accepted as inevitable, *as happens regularly with men*. In a rich life, we seldom care to know with such calculation the price of things. What kind of mother would make such a calculation at the moment of giving birth?⁵⁶

Then there is the absolutely cold *impartiality* of Bentham's dictum—each vessel of sentience is to count for one and none more than one. This is anathema to a native feminine moral sensibility. Why should my child count for the same as one in some distant part of the globe that I will never meet? And if it is units of abstracted happiness, cashed out in pleasures of varying magnitudes and qualities, that matter, ten Tasmanian Devils may have as much or more in store for them of these things than my child.

Any moral theory can be made out to appear absurd but utilitarianism takes the cake. It's relative perspicuousness invites this realization. So if it allows Marquis to glibly slide to his conclusion that a fetus's is the worst possible kind of killing... well, that says what we (she) need(s) to know about utilitarianism. Utility shoots itself in the foot here.

Yet, is it a surprise that for many male thinkers utilitarianism is often running neck and neck with Kantianism as a viable alternative moral theory? After all, it sports the virtue of simplicity: it is first in line to be presented in college survey courses of ethical theories. It has an air of the scientific, if not of engineering, about it. It seems to range over quantifiable observables which an engineer wanting to make a system that “just worked” could appreciate. Pleasure is measurable, right? We can add. More is better... who can argue with that?

As for the impartiality: that is a cardinal principle of any *masculine* moral theory, Kant's included. Men have traditionally been concerned with managing large numbers of people whose bonds to each other are weaker than those of typical concern to women in more domestic situations.⁵⁷ Men see their way to progressively dissolving local bonds in favor of increasingly weaker ones ranging over larger and larger groups: the whole human species, the lot of all sentient beings, all life...⁵⁸

actual survey showed they got it backwards. And the number of female philosophers who identified as non-consequentialist was appreciably less than that of male philosophers. See <http://philpapers.org/surveys/results.pl> and http://philpapers.org/surveys/linear_most_with.pl?A=background:gender:female. Philosophers are justifiably averse to taking empirical results too seriously. And results like these alone prove nothing. But they may help my “preponderance of the evidence” argument which draws from many other quarters.

56 Left to his own devices, a man very well might make the calculation and, as often as not, conclude that, *no*, bringing new life into the world does not maximize happiness. We, most of us, exist because he is not left to his own devices. The dream of rigorous utility is one of *his* devices, not hers.

57 I say “traditionally” in order to be agnostic about whether it is nature or nurture in operation. I don't see the point of that debate: nurture is what it is because of nature and what we call natural is always going to be filtered by what we have made of our nature up to now, i.e., culture. (Surely enough philosophers must have made that point by now.) Maybe what is being asked is really: can we and ought we to change? To which I answer yes and yes. And maybe even those questions are moot: I think we *will* change no matter what. I am left with this question: How ought we to express our aspiration as to the direction? We may have ideas about that.

58 There is a *reductio* waiting in the wings to overtake the direction of this thought, which I will leave for your imagination here.

Isn't this a good thing? Isn't the opposite tendency what fuels every kind of nasty parochialism or xenophobia—nepotism, cronyism, racism, anti-semitism, sexism, sectarianism, speciesism, nationalism as well as the last acceptable -ism in polite society: patriotism?

If there is something salutary about the masculine tendency to abstract from the concrete, surely the imperative toward impartiality is it. It is, I think, what underwrites what moral credibility utilitarianism has and why, at least at a certain remove from the morally concrete individual, it has appeal. Especially at the level where morality cannot be served, where largely political—essentially crowd management—considerations may override morality proper altogether, it has its uses.

But utilitarianism is not a proper moral theory whatever political uses it might have. If it is true that pleasure is the measure of all things moral, why should I care about pleasure? Sentience occurs in perverted forms and there are no utilitarian grounds that may convince me that I am wrong to prefer pain or even indifference without unaccountably hemming my sensibility with the idea that the well-being of the greatest number *should* matter to me.⁵⁹

When we have to resort to utilitarian considerations in moral contexts, it is because proper moral theory is either indifferent or tied up in knots about what to do. I do think such moral tragedy indeed happens. We may do wrong no matter what we do. In those straits, utility may just help us, through basically *extra-moral* considerations, to live with ourselves in the aftermath of a decision. But that is neither good nor bad in itself: it is just what we will likely resort to.⁶⁰

I call utilitarianism a fall-back theory of morality, at best, the spare tire of ethics. This explains its limited appeal as well as limited moral authority... and why, in relation to the problem of abortion, which goes to the core of *individual* morality (really the only kind there is: all else is crowd and resource management), it is of next to no use. Marquis does us the favor of illustrating neatly why.

Virtue theory, for its part, is less of a theory than a way of avoiding the need for moral theory at all. It offers no ultimate source for normativity though it does a remarkable job without it. If, try as you might, you see little virtue in your human environment that strikes you as worthy of emulation, Aristotle's picture falls flat. If there is virtue there, we owe it to kernels of truth that come from outside his picture. Still, if the point of morality is always *first* to get us to behave decently, like well-trained dogs, as opposed to being wise about it, virtue theory is very serviceable. Some of us hanker to be wise, though, in the face of this.

Why Kant sent women out of the room

There remains Kantianism to explain. Kant offered the quintessential duty-based account of how good comes into the world through human action. I have already suggested its appeal and application to men. Men love rules. They love to make them and break them. And they *need* them. They are lost without

59 It is no wonder that the best of utilitarians, Hume, *combined* utility with moral sense theory. It is the beautiful thought that most people have some semblance of fellow-feeling in them (true or not) that does the real moral work here. Utility is an afterthought.

60 See my note about the murderer at the door. I think utility gets to shine in precisely the situation when morality proper disqualifies itself.

them. They make them up as they go—nasty ones, if they are not provided with carefully crafted ones that play on their weakness for being awed by something unassailable.⁶¹ And did I say they will *break* them anyway? Big time.

But nothing could be further from feminine moral experience than the fetish of principle. Why is it that Kant, who famously dismissed woman from the whole realm of the moral, has among his most ardent defenders a powerful team of some of the brightest women in the contemporary philosophical world?⁶² It is striking that Kant's star is at least as bright today among women—just as feminism is beginning to come into its theoretical own—as among male theorists. Why?

In a word, Kant was chivalrous. He excused women from the role of serious actors on the moral stage because, frankly, it is a very grubby place. It drips with the criminal intentions of men. And though only a tiny fraction of them are ever realized—even *that number is pretty impressive*. About 93% of everyone incarcerated is male. There has never been a place or time in which we have reason to believe that number has been significantly different. Moreover, 40% of the perpetrators of the most serious crimes such as murder are never apprehended. The number is even worse for doers of lesser crimes, most especially for the sophisticated variety. The apprehension rate has been estimated at less than 10% for white-collar, or what I call “abstract,” crime. The conviction rate still less.

Kant probably didn't have the benefit of criminal statistics. But he had newspapers. So do we. The headline “Man comes home, shoots wife and children, then self” could be printed in advance on any given day in any major news publication. Home, school, place of business, the halls of government, not to mention street or battlefield: it is always men doing it. And when women do it, it is truly sensational: she only needs to drown her one kid to get the same attention that a man has to gun down a dozen strangers to get.

Yet this two-bit violent crime is only the tip of the iceberg. Street crime at least runs a serious risk of being addressed when our jaded sensibilities are occasionally stunned by some graphic new atrocity. There is a more invidious form crime takes whose magnitude is ten times greater—and maybe that many times more boring.⁶³

As children we get fed platitudes about how important it is to get a good education and about how crime doesn't pay (boys, especially, hear that). *If the first bit of advice is true, and you take it, the second isn't*. The most successful criminals are precisely those with the best education. Crime most certainly *does* pay and, as with any career path, the more so, the better the education of its perpetrator. In fact, the very best criminals are those who, by definition, *never get caught*, who never grace our statistics. To be caught is the mark of a failed criminal. The successful criminal never knows the inside of a jail. We don't want our children to be failures. The height of success is to take big chances and to win! That takes supreme intelligence, skill, and courage (and, of course, luck, but we don't want to overstress that: our wings may suffer clipping at the thought). And this is as true of crime as of any other endeavor... *Males with college educations reared in two parents home are especially adept at abstract crime*—which unfortunately does not result in abstract suffering or abstract victims. Of course, such suffering, by design, camouflages well enough among “the slings and arrows of outrageous

61 The *unassailability* is critical because if they can see their way to its defeat or perversion, this will be their first thought. Kant's genius is that he moved the basis of true morality into the realm of the transcendental or heterocosmic.

62 I have in mind the likes of Onora O'Neill, Christine Korsgaard, Barbara Herman, and Marcia Barron.

63 See the “Abstract Crime” section of my notes here: <http://phlogma.com/moral-theory/stephenson-crime-1-177>.

fortune” that we readily excuse it as the normal cost of the business of living. The diffuse cost, nevertheless, insidiously cripples human progress like none other.⁶⁴

It is *men*—Kant and everybody must have known even back then—who always do the lion's share of human-created evil. Feminist efforts have managed with some success in the past century to increase the representation of women in many male-dominated venues. Since 1916, when the percentage was zero, women have managed, for instance, to achieve about 17% of U. S. Congressional seats (as of 2012). In business, in the professions, in education, the news may be somewhat better. Yet women have shown themselves miserable incompetents at rectifying the sex imbalance in our penal institutions. What is wrong with women? Why don't they ravage and kill more?

And we have only gestured at *legal* crime here as opposed to the vastly larger class of *moral* crimes. (The picture is obscene enough leaving that out... and, if left lying about, children may read this.) Legal malfeasance is only a sampling of the evil that gets done. We don't document moral crime. Though they are not identical, there is a relationship between between what is illegal and what is immoral. The former hints at the latter, the way a symptom does at a disease.

Why women invite Kant back into the room

I have labored the point about male nastiness because it sheds light on why Kant sent women out of the room when discussing moral philosophy. It wasn't that their delicate ears might be subjected to disturbing truths. It was probably so as not to bore them. The ones who needed to hear about morality were—*have always been*—men.

Kant offers a theory of morality tailor-made for men, a theory that speaks to the heart of their vulnerability and the strength of will it suits their vanity to claim. Had women had an interest in staying in the room, they could only have nodded in approval at what Kant was saying to men, assuming these women were not overly sheltered. In the centuries since, the news has not changed: men do crime like fish swim and are no less grievously in need of moral nurturing.

But with the rise of prominent women philosophers, there is now a fresh perspective on men that did not exist in Kant's time. The fact is, the mirror that Kant's morality holds up to maledom is burdensome and men do get tired of being told how depraved they are. There is secret comfort for him in being thought just human and no better or worse than a woman. It can be a relief to think that we are all in this together, women and men alike. It takes some of the heat off of men, specifically. Equality feminism has its uses for men. It offers dispensation. And frankly sometimes they wish Kant, with his pointed remarks about them—men—would just go away.

The peril in believing too hard in the essential moral (hence, political) interchangeability of women and men has occurred to some perceptive women. They must have noticed that the inertia that always pits itself against morality since the first day we are told we can not do what we want to do and which never goes away but only learns new forms of subversion is alive and well. These women saw well enough

64 I'll leave it to others to argue that somehow this cost is compensated for by the good that men do. I am not convinced. See my notes on Baumeister: <http://phlogma.com/?p=171>.

what men were like, that they were *unlike* women, and that their virtues and vices were different and required tools developed with these differences in mind. Kant may not speak as directly to women, to their *proprietary* moral concerns, and as other philosophers (notably Hume), but women have seen the fit of his moral ideas to the way the world is—the world they share with men, and how urgent it is that someone speak to men in a moral language they understand at least well enough sometimes to resent. They rightly see this language in Kant.

Women, especially, have had to deal with the aftermath of much masculine celebration of autonomy. Someone keen on its limitations is called for. So it is that Kant, who famously articulated the glory in the idea—though also less famously its grime, has come to have insightful women among his best champions.

And what does Kant say about abortion?

Next to nothing helpful. Not in the place most philosophers have looked, not, at least, in his categorical imperatives. The imperatives have been interpreted (they are notoriously game in that way) every which way on abortion.⁶⁵ This, among other things, might make us suspect the imperatives were never intended to apply to this problem—if they were at all, which is doubtful, to those generally for whom abortion could loom as a problem. Since obviously, men don't have to contend with aborting life emerging directly from their own bodies and Kant's moral thinking was always about men, not women, why should it have?

Kant was being “sexist,” certainly, not to address women, just not in the derogatory way the term has come to be used. The moral world in which the topic of abortion properly belongs is not one inhabited by men. The mistake of male philosophical busybodies has been to force it into their own moral world which they have taken presumptively as *the* moral world. Many women have followed men down this mistaken path.

But there are more than a few hints in Kant (even a systematic thread throughout his philosophy) that suggests that he would have been more than willing to leave the relationship between a mother and child, born or unborn, outside the purview of male moral opinion.⁶⁶

To abort or not to abort is among the gravest moral predicaments that a woman may ever face. The lead in the decision and justification for it is always a matter for women, exclusively.⁶⁷ The best opinion men can offer is to respectfully shut up as, I think, Kant did.⁶⁸

65 Lara Denis offers perspective on these attempts in “Abortion and Kant’s Formula of Universal Law” *Canadian Journal of Philosophy*, Vol. 37, No. 4, December 2007, pp. 547-580.

66 Kant and other major male thinkers of his time show sufficient signs of awareness of an ancient tradition of mother-right that pre-dates philosophy, both conceptually and historically. In at least one place, Kant explicitly bows before that tradition. See <http://phlogma.com/kant/honor-his-and-hers-129>.

67 No aspersion is cast here on the importance of women's voices on other moral problems. My claim is that on *this one* it verges on exclusive.

68 I am addressing here Kant's view of the morality of abortion, not its legality in the sense that it may violate public law. For Kant, the ultimate source and highest possible tribunal of worthiness was the moral law, not the contingently enacted law of states. The law of “men” (I intend the ambiguity of the term) has a different justification than the moral law, and it is, in principle, a morally defeasible justification. The passage where Kant lightly passes over infanticide—and

Not to be misunderstood (if that is possible)

Mary Wollstonecraft was under the impression that women needed to be treated the same as men in order to begin to be taken seriously. In a world, the one she lived in, thoroughly saturated with blind sexism,⁶⁹ it is hard to imagine a better idea to start with. But unless we think our awareness of injustice toward women has not progressed at all in the last two and a half centuries, I argue her strategy is no longer appropriate for us.⁷⁰ It is *her* world, the world seen from the standpoint of women, that requires being taken as seriously as that of men precisely because it offers something *irreplaceably different and essential*, not because it is interchangeable. I hope that it is not controversial that there *is* such a world. The implied interchangeability is the degraded sense of “equality” that is under scrutiny here.⁷¹ So I do exactly what Wollstonecraft warned us not to do: *sex morality*.⁷²

It is scarcely a secret that men created most of public culture in the first place to serve their own ends. Women were an afterthought to their plans, if that. We have feminism in large part to thank for this insight. But we can also detect at moments an awareness of this in important male thinkers, even as they were writing, centuries ago. Their notions could not have survived as well as they have otherwise. We must be careful not to force anachronistic judgments on the dead which in the end serve no purpose but self-congratulation. It is the living who oppress us, not the dead.

implicitly, abortion—is a case involving a child conceived out of wedlock. See Bianco Luno, <http://phlogma.com/kant/honor-his-and-hers-129>. In marriage, presumably Kant would no longer have been so casual about infanticide (or abortion). But, if so, the reason would then follow from legal, not moral, considerations. In wedlock, a social institution, two more interested parties in the question of the birth of a potential new citizen acquire rights: the father and society at large. The law is the law (not to be confused with “The Law”—the one and only *moral* one in Kant’s view). No more and no less. That is both its authority and its admission of contingency. It is at best a *derived* institution and, as such, open to revision. Indeed, the moral perfectionism implicit in Kant’s view of moral psychology will press hard on contingently-constructed law, the kind passed by legislatures.

I am not suggesting that Kant himself was some sort of political progressive. Had he lived now he might have been, but certainly living then he may have done well *not* to be. There is nothing inherently moral in being progressive. The morality of one’s politics will depend on history. Morality *itself*, however, does not in Kant—though it may well have a thing or two to do with physiology. I argue that Kant acknowledged a moral space for women which his philosophical instincts left uncluttered. A move that is, I think, a matter of appreciation by women who have thought through his ideas. That space is properly theirs to fill. Moreover, I would add that the space comprises better than half of all the moral space there is to fill. The field in which Kantian ethics has meaning consists of mainly of adult males and only of most of them some part of the time. But it is a critical time.

69 “Blind” because most women, no less than men, were not impressed with the fact that both women and human society as a whole were being held back. “Sexist” because they were being held back, not because sex difference wasn’t being ignored.

70 I take seriously the possibility that there has been no real *moral* progress since Wollstonecraft’s day. It is possible that moral progress happens only on an evolutionary time scale. In which case, I write for posterity: that someone someday will know that at least *some* of us had a clue even now.

71 For an indication of the extent to which I hold this conviction and its political consequences, see my commentary on Sylviane Agacinski’s proposals in *Politique des sexes*. Editions du Seuil, 1998. Translated as *Parity of the Sexes* by Lisa Walsh. (New York: Columbia University Press, 2001), especially, the chapter “Freedom and Fecundity.” *Annotation*: <http://phlogma.com/philosophy-and-sex/feminism/freedom-and-fecundity-111>

72 Mary Wollstonecraft, *A Vindication of the Rights of Woman*, (London: W. Scott, 1892), chapter 2. Online: <http://etext.virginia.edu/toc/modeng/public/WolVind.html>

Whatever historical reasons we had for needing to emphasize commonalities, I think it is high time we address differences, in order to get past *both* to the crux of the matter, something approaching justice for all concerned.

This does not mean going back to a time when differences were assumed or used uncritically. It means that the moral⁷³ infrastructure of civilization must change even more radically from anything we know from the past. It means that every concept we use to structure human experience, without exception, must be rethought so that the value we insert into the world has its source in something fundamental and true about human experience. That experience is *essentially* bifurcated.

The lesson as it pertains to abortion, specifically, is that to give birth is just as morally ambiguous as to prevent it. Just because nature threatens to use your body to further its plan does not *by itself* morally bless your decision to cooperate. If *morality* has anything to say about a new entry into life, this is it: that it is no small thing.

A moral act may be viewed with the focus on the patient, the action, or the agent: that is, the being that is the object of the act, the act itself, and the one performing the act. In abortion debates, the nature of the patient has commonly been addressed. The personhood and rights, if any, of the fetus, for example, are the focus in quasi-legalistic rights theory. The act itself, its character in connection with the agent, comes up in virtue theory.

But the natural category of the agent, separate from both the patient and action, is almost never directly broached, it seems, in modern treatments of the abortion problem. I think this is a serious error.

Who the agent is or *what kind* of being they are has, in situations where abortion is being contemplated, *everything to do with*, if not the rightness or wrongness of abortion, the privilege of judging it.⁷⁴

Only someone who can have or had or might have the experience of bringing forth a new life from within their body is entitled to have an opinion about whether it is a good, wise, or even permissible thing to do.

Men, for now, are not.⁷⁵

⁷³ And, subsequently, the political and the legal.

⁷⁴ John Noonan asserts that *life* is the closest thing to an absolute value in history as a way of expressing its singularity. I am inclined to agree. But I would add that, among things moral agents may do, giving life is singularly the province of women: its moral enormity is second to none, both in the choice to give or to refuse to give it---*for either choice is as grave as any a human being will ever be in a position to make*. The sex of the agent may matter in other moral decisions as well (I argue that it does at least in subtle ways), but in *this* one, it settles the question of *who* may stand in judgment. Our ontological characterization of moral agents may require revision if it implies otherwise.

In what I just said, note that I break the connection between the choice to have sexual intercourse and the choice to bring life into the world. The Catholic view on this question is rooted in the need to preserve order or decorum in the world of human impulses. It is a profoundly heterocosmic view of the world. It just so happens that traditional male-centered morality is also heterocosmic. I do not reject out of hand the idea that heterocosmicity is a genuinely human response to moral enormity. It has its place. There are moral problems big enough to require solutions on that scale. Just not here, again, because of who is entitled to judge.

⁷⁵ At the beginning of this lecture, I said I approach from a very different direction than is common the conclusion that the first and primary voice on the matter of abortion is always with the woman contemplating it. I think it is significant that in stressing profound, organic, and consequential differences between women and men, I can converge on the same

Abortion is part of the answer to the question of what is permissible at the beginning of life. Near the beginning and also near the end of life what we normally mean by “morality” is strained. At these points nothing is categorically required or prohibited. Exactly when these points end and begin is open to question. But it is only in the realm between that morality properly speaks with authority. And the authority it speaks *with* is tied to the kinds of beings it speaks *to*. At the entry and exit points to this realm, gatekeepers must take morality into their own hands.

opinion as conventional feminists do. I do so, however, less directly from a potentially paternalistic desire to be kind to or respectful of women than from working out the fallout of an *internal* dynamic of masculine morality. Men have not minded *their* business as well as they should. Their opinion on what women *should* do has been a harmful distraction.